Lau Yeong Nan v Life Publisher Berhad & Ors

HIGH COURT (SHAH ALAM) — CIVIL SUIT NO MT1-22-123 OF 1997
SURIYADI J
1 OCTOBER 2004

Tort — Defamation — Libel — Libel in newspapers — Aggravated damages — Special damages

Tort — Defamation — Libel — Libel in newspapers — Whether wordings defamatory — Whether defence of fair comment available

This was the plaintiff's defamation action against the defendants. The alleged defamation arose out of an article entitled 'Praiseworthy Bravery' published in the 'New Life Post' newspaper. The plaintiff had divided the alleged defamatory contents of the article into three portions. The article (translated from Chinese) contained the following '… There are not many local recording companies bosses who are so 'generous'. The first album suffered losses. Maybe could give the second album a try. If the second album also suffered losses, may the singer please practise singing the song 'Fen Fei Yen' … Using a naked photograph on the album front cover is a taboo in the musical circle in Malaysia. Later he revealed himself that that a rich woman approached him 'to borrow his seeds' to give birth to a child, a homosexual raped him etc ... Recently he even spread news that he would march into China market … His MTV new songs were aired in the Central Television Station. It is not known whether this matter is true or false? Alright, let it be true. But Mr Lau's image and skill of singing still need 'polishing'. If he is put out to win honour for his country hastily the Chinese who do not know the truth will think that he is most popular, most potential and has the most representation in Malaysia …'. According to the plaintiff's pleadings, the above statements in their natural and ordinary meaning were meant to carry the message, inter alia, that the plaintiff was an unknown and a liar, incompetent to sing in the various media and that he was attempting to deceive the public that his music was heard by the world at large and had cheated the Chinese public in China. According to the plaintiff, the sum effect of the above malicious publication was that his character, credit and reputation as a prominent singer had been besmirched and destroyed and, as he has suffered seriously, he thus was entitled to damages.

As regards damages, the plaintiff claimed that he had suffered pecuniary losses in the like of several concert contracts being terminated with a company called Sri Steps Sdn Bhd ('Sri Steps'). The pecuniary loss allegedly suffered by the plaintiff pursuant to the cancellation of the agreement amounted to RM4.5 million. The eventual compensation sought was RM10 million, made up of general, special, aggravated and exemplary damages.

Held:

(1) The court had to first arrive at a conclusion that the words complained of were defamatory. After that pronouncement, the law would then presume that they were false, whereupon the onus would shift to the

defendant to prove justification, namely that those words were true (see para 14).

(2) The defendants in their respective capacity did publish the libellous article and evidentially the person mentioned in the article was beyond any doubt the plaintiff. The article did not only identify the plaintiff by name but the defendants had also admitted that the words referred to the plaintiff by calling evidence to that effect (see paras 22 and 37).

(3) The article was capable of being defamatory. Any reader in the court selected group, after reading the article would naturally arrive at an opinion that not only was the plaintiff an untalented and unsuccessful singer who thrived on sympathy from recording companies but was also a liar, a homosexual, a sexually perverted person, a sodomised victim, someone no parent would want his or her child to emulate and someone who breached all rules of decency (see para 23).

(4) To rebut the presumption that the article was false, in order to be entitled to the defence of fair comment, the defendants had attempted to adduce rebuttal evidence justifying the facts supplied in the article. In respect of the defendants' statement in the article that the plaintiff had used a naked photograph on his album cover, the cover showed only the bared back of the plaintiff. With all the available evidence, the court was satisfied that the plaintiff never was proven to have posed naked during that impugned photography session. That being so, the defendants' testimony as regards the naked factor on the album cover was far from the truth (see paras 30 and 31).

(5) Another relevant point open to dispute was whether the plaintiff was raped at all. The article prepared by one Ms Lim Mee Fong, which was the very source supposedly reproduced by the defendants, merely stated that the plaintiff was sexually assaulted, an offence which was less demeaning or humiliating. Certainly the plaintiff was not raped (see paras 33 and 34).

(6) The message relayed to the public in the article was that the plaintiff's first album had suffered losses and that he was not a viable investment to any recording company. Despite that spirited statement, the defendants had failed to adduce any admissible evidence to rebut the presumption of falsity of the said facts. Accordingly, the defendants had not been successful in proving that: (a) the plaintiff was a bad and an unsuccessful singer; (b) the plaintiff's albums had suffered losses; (c) the plaintiff had posed naked on the cover of one of his albums; and (d) the plaintiff was raped (see paras 35 and 36).

(7) The defence of fair comment related to matters of public interest. Any person who filled a public position rendered himself to scrutiny and public discussion, and if any of his public acts, which were of public interest, were improper or wrong, he must accept fair criticism from the critical public. This right of fair comment was subject to certain principles, namely, the words complained of must be fair and were bona fide comments and of public interest, and the statements must be true. Even though comments based on untrue facts may be frowned upon, a

plea of fair comment would not necessarily fail merely on some minor but inaccurate fact made public. In the instant case, the false facts not only were substantial and highly important but effortlessly recognisable as being the heart and soul of the libellous article. With such a failure by the defendants to establish factually the contents of the libellous article, the defendants had thus failed to rebut the presumption of falsity of facts and thus must be denied the legal right to rely on the defence of fair comment (see paras 38, 39, 41 and 42).

(8) The negative picture painted by the defendants had clearly stunted the plaintiff's career growth when contracts suddenly begin to dry up or executed contracts were terminated or not extended. Since the libellous attacks were sarcastic, withering, demeaning, scandalous and outright false and showed how heartless and unfair the defendants were, the court was entitled to award aggravated damages. The unforgiving behaviour of the defendants, which apart from damaging the reputation of the plaintiff, had humiliated him and in the process practically caused mental stress to him. Accordingly, an award of RM300,000 for general and aggravated damages was a fair sum in the circumstances of the case (see para 48, 49 and 51).

(9) As for special damages, although the plaintiff had alleged that contracts had dried up and that he was suffering financial setbacks, the plaintiff did not make any attempts to prove those losses except for the termination of a contract with Sri Steps. Despite the oral testimony of Sri Step's director, supported by a documented agreement, the plaintiff had not succeeded in proving this loss satisfactorily on a balance of probabilities. Although the statement of claim was filed on 24 April 1997, the supposed contract with Sri Steps (signed on 20 December 1996) was only included in the pleadings after an amendment had been made on 26 April 1998. This development was certainly unusual as several negative interpretations can unfold from that, such as it being an afterthought and thus a sham contract. Further, at the time of the supposed execution of the contract with Sri Steps, the plaintiff had already signed a contract with another company ('Layar Opera'). This agreement with Layar Opera stipulated that the plaintiff was not to appear or perform in any motion picture, stage plays, television features or radio programmes of any kind without the producer's prior written consent. Written consent was not obtained from Layar Opera. The plaintiff was a singer by profession, yet Sri Step's principal activity, as reflected in its director's report was 'educating and promoting dancing and arts'. Having considered all the evidence of inactivity and unreasonableness of the Sri Steps agreement, the plaintiff's claim for special damages was accordingly rejected (see paras 52–54 and 57).

[**Bahasa Malaysia summary**

Ini merupakan tindakan plaintif untuk fitnah terhadap defendan-defendan. Fitnah yang dikatakan timbul daripada satu artikel yang bertajuk

'Praiseworthy Bravery' yang diterbitkan di dalam suratkhabar' New Life Post'. Plaintif telah membahagikan kandungan-kandungan fitnah artikel itu kepada tiga bahagian. Artikel (yang diterjemahkan daripada Bahasa Cina) mengandungi yang berikut: '... There are not many local recording companies bosses who are so 'generous'. The first album suffered losses. Maybe could give the second album a try. If the album also suffered losses, may the singer please practise singing the song 'Fen Fei Yen' ... Using a naked photograph on the album front cover is a taboo in the musical circle in Malaysia. Later he revealed himself that a rich woman recently approached him 'to borrow his seeds' to give birth to a child, a homosexual raped him etc ... Recently he even spread news that he would march into China market ... His MTV new songs were aired in the Central Television Station. It is not known whether this matter is true or false? Alright, let it be true. But Mr Lau's image and skill of singing still need 'polishing'. If he is most popular, most potential and has the most representation in Malaysia...' Mengikut pliding plaintif, penyataan-penyataan seperti di atas di dalam maksud biasa mereka adalah bahawa, inter alia, plaintif adalah seorang yang tidak terkenal dan penipu, tidak berbakat menyanyi di dalam media dan beliau mencuba memperdayakan orang awam bahawa muzik beliau didengar oleh dunia dan beliau telah memperdayakan orang awam di China. Mengikut plaintif, kesan keseluruhan terbitan niat jahat adalah bahawa peribadi, kebolehpercayaan dan nama baik beliau sebagai seorang penyanyi yang terkenal telah dicemarkan dan dihancurkan dan beliau telah menderita dan berhak kepada ganti rugi.

Berkait dengan ganti rugi, plaintif berkata bahawa beliau mengalami kerugian kewangan seperti beberapa kontrak konsert beliau ditamatkan dengan syarikat bernama Sri Steps dn Bhd ('Sri Steps'). Kerugian kewangan yang dikatakan dialami oleh plaintif menurut penamatan kontrak berjumlah RM4.5j. Pampasan yang dituntut adalah RM10j, iaitu ganti rugi am, khas, teruk dan teladan.

Diputuskan:

(1) Mahkamah perlu membuat kesimpulan bahawa perkataan yang diadu adalah fitnah. Setelah itu, undang-undang akan menganggap perkataan-perkataan itu palsu, di mana beban akan memindah kepada defendan untuk membuktikan justifikasi, iaitu perkataan itu adalah benar (lihat perenggan 14).

(2) Defendan-defendan di dalam tugas mereka telah menerbitkan artikel berlibel itu dan di sisi keterangan orang yang dikatakan di dalam artikel itu melebihi keraguan adalah plaintif. Artikel itu bukan sahaja mengecamkan plaintif dengan nama beliau tetapi defendan-defendan telah mengaku bahawa perkataan-perkataan itu merujuk kepada plaintif dengan memanggil keterangan mengenai itu (lihat perenggan 22 dan 37).

(3) Artikel itu boleh dikatakan fitnah. Sebarang pembaca daripada kumpulan yang dipilih oleh mahkamah, setelah membaca artikel itu akan membuat kesimpulan bahawa plaintif adalah seorang penyanyi

yang tidak berbakat dan tidak berjaya yang bergantung kepada belas kasihan syarikat rekod dan seorang penipu, homoseks, seorang penyumbaleweng, seorang mangsa yang telah diliwat, seorang yang ibubapa-ibubapa tidak hendak kanak-kanak mereka mengikut jejak orang itu dan seorang yang melanggar semua aturan kesopanan (lihat perenggan 23).

(4) Untuk mematahkan anggapan bahawa artikel itu palsu, untuk berhak kepada pembelaan komen berpatutan, defendan-defendan telah cuba mengemukakan keterangan pematahan yang menjustifikasikan fakta-fakta di dalam artikel itu. Berkait dengan penyataan defendan-defendan di dalam artikel itu bahawa plaintif telah menggunakan foto bogel pada penutup album beliau, penutup itu hanya menunjukkan bahagian belakang terdedah plaintif itu. Dengan segala keterangan yang sedia ada, mahkamah berpuas hati bahawa plaintif tidak dibuktikan bergaya bogel semasa sesi mengambil foto. Oleh itu, testimoni defendan-defendan berkait dengan faktor bogel pada penutup album adalah tidak benar (lihat perenggan 30 dan 31).

(5) Satu lagi fakta penting adalah sama ada plaintif dirogol. Artikel yang disediakan oleh Ms Lim Mee Fong yang mendapat sumbernya dari defendan telah menyatakan bahawa plaintif telah dieksploit secara seksual, satu kejadian yang memalukan. Plaintif sememangnya tidak dirogol (lihat perenggan 33 dan 34).

(6) Apa yang telah dikemukakan kepada masyarakat dalam artikel tersebut adalah bahawa album pertama plaintif telah mengalami kerugian dan beliau tidak memberi sebarang manfaat terhadap syarikat rakaman beliau. Walaupun kenyataan ini agak kasar defendan tidak berjaya memberikan sebarang bukti terhadap ketidaksahihan fakta tersebut. Defendan juga gagal membuktikan bahawa: (a) plaintif adalah seorang yang berkelakuan buruk dan penyanyi yang teruk; (b) album plaintif mengalami kerugian; (c) plaintif telah merakamkan gambarnya muka albumnya dalam keadaan bogel dan (d) plaintif telah dirogol (lihat perenggan 35 dan 36).

(7) Pembelaan komen berpatutan yang digunakan itu berdasarkan kepentingan masyarakat. Individu yang menjadi tumpuan masyarakat akan mendapati dirinya diteliti dan dibincang oleh masyarakat dan jika kelakuan individu tersebut adalah salah atau tidak berpatutan maka beliau mesti menerima kritis yang adil dari masyarakat. Ini adalah hak pembelaan komen dan tertakluk kepada beberapa prinsip, iaitu kenyataan yang dikomen mestilah adil dan bona fide dan untuk kepentingan masyarakat. Walaupun komen tersebut berdasarkan fakta yang tidak benar, komen ini tidak akan berjaya jika kenyataan itu hanya kecil dan dinyatakan kepada masyarakat. Dalam kes ini fakta palsu yang dibuat agak substantif dan merupakan nadi kepada artikel yang libel. Defendan juga gagal membuktikan kepalsuan fakta tersebut dan tidak patut diberi pembelaan komen berpatutan (lihat perenggan 38, 39, 41 dan 42).

(8) Gambaran negatif yang ditonjolkan oleh defendan itu telah mencemar kerjaya plaintif apabila tiada kontrak baru dan kontrak yang lama telah dibatalkan. Komen-komen libel itu merupakan sindiran, skandal yang memeranjatkan, merendahkan martabat palsu dan memalukan plaintif serta menunjukkan bahawa defendan tidak berhati perut dan telah memalukan plaintif dan mengakibatkan tekanan mental terhadap plaintif. Maka mahkamah memberikan ganti rugi terhadap plaintif yang berjumlah sebanyak RM300,000. Mahkamah berpendapat bahawa ganti rugi ini adil dalam keadaan kes ini (lihat perenggan 49 dan 51).

(9) Bagi ganti rugi khas, walaupun plaintif mendakwa bahawa tiada tawaran baru dan plaintif mempunyai masalah kewangan, plaintif tidak dapat membuktikan dakwaan ini. Beliau cuma menunjukkan kontrak Sri Steps yang telah dibatalkan. Dalam keterangan lisan pengarah urusan Sri Steps dan bukti dokumen plaintif tidak berjaya menunjukkan kerugiannya secara memuaskan. Walaupun penyata tuntutan difailkan pada 24 April 1997 kontrak dengan Sri Steps (ditandatangani pada 20 Disember 1996) dimasukkan dalam pliding selepas pembetulan dibuat pada 26 April 1998. perkembangan ini agak luar biasa dan terdapat beberapa implikasi negatif terhadap isu ini seperti kontrak ini tidak tepat dan merupakan satu penipuan. Pada masa kontrak ini patut ditandatangani, plaintif telah pun menandatangani kontrak dengan syarikat lain iaitu Layar Opera. Terma Syarikat Layar Opera ini adalah bahawa plaintif tidak boleh muncul untuk filem, televisyen, radio tanpa kebenaran bertulis dari produser. Kebenaran bertulis ini tidak diperolehi dari Layar Opera. Plaintif adalah seorang penyanyi dan aktiviti Sri Steps adalah untuk mempromosikan tarian dan seni. Setelah meneliti kesemua bukti ini dalam perjanjian Sri Steps permohonan plaintif untuk kerugian khas ditolak (lihat perenggan 52–54 dan 57).]

Notes

For cases on libel, see 12 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 263-352.

Cases referred to

Abdul Rahman Talib v Seenwasagam [1965] 1 MLJ 142 (refd)
AJA Peter v OG Nio & Ors [1980] 1 MLJ 226 (refd)
Boardway Approvals Ltd v Oldhams Press Ltd [1965] 2 All ER 423 (refd)
Cargill v Carmichael & Anor [1883] 1 Ky 603 (Civ) (refd)
Chong Siew Chiang v Chua Ching Geh & Anor [1995] 1 MLJ 551 (refd)
Clarence Wilfred v Tengku Adnan bin Tengku & Anor [1983] 1 CLJ 136 (refd)
Coopers & Lybrand v Singapore Society of Accountants & Anor [1988] 3 MLJ 134 (refd)
Curtis v Metro-Goldwyn-Meyer (Oriental) Inc [1931] SSLR 42 (refd)
Drummond-Jackson v British Medical Association [1970] 1 All ER 1094 (refd)
Lee Kuan Yew v Davies [1990] 1 MLJ 390 (refd)
Lee Kuan Yew v JB Jeyaretnam [1979] 1 MLJ 281 (refd)

London Artists Ltd v Littler [1969] 2 QB 375 (refd)
Lyon v Daily Telegraph [1943] KB 746 (refd)
McCarey v Associated Newspapers Ltd [1964] 3 All ER 947 (refd)
Mohd Onn bin Muda (Haji) v Saniboy Mohd Ismail [1998] 1 CLJ 569 (refd)
Pang Fee Siong v Piong Kien Siong [1999] 3 MLJ 189 (refd)
Purshottam Vijay v State AIR 1961 MP 205 (refd)
*R Murugason v The Straits Times Press (*1975) Ltd [1984] 2 MLJ 10 (refd)
R v Gray [1900] 2 QB 36 (refd)
Raghunath Singh v Mukandi Lal AIR 1936 ALL 780 (refd)
Rajagopal v Rajan [1972] 1 MLJ 45 (refd)
Rookes v Barnard [1964] AC 1129 (refd)
S Pakianathan v Jenni Ibrahim [1988] 2 MLJ 173 (refd)
SB Palmer v AS Rajah & Ors [1949] MLJ 6 (refd)
Scott v Sampson [1882] 8 QBD 491 (refd)
Syed Husin Ali v Sharikat Perchetakan Utusan Melayu Bhd & Anor [1973] 2 MLJ 256 (refd)
Tun Datuk Patinggi Abdul Rahman Yakub v Bre Sdn Bhd [1996] 1 MLJ 393
Youssoupoff v Metro-Goldwyn-Mayer Picture Ltd [1934] TLR 581 (refd)

Legislation referred to

Defamation Act 1957
Civil Law Act 1956
Rules of the High Court 1980 O 78

M Manoharan Malayalam (M Manoharan & Co) and Mahadevi (Mahadevi Nadchatiram & Partners) for the plaintiff
Lorraine Cheah (MK Yee with her) (Shearn Delamore & Co) for the defendants

Suriyadi J:

[1] The plaintiff is a singer claiming damages for defamation contained and reported in an article entitled 'Praiseworthy Bravery' (P15), in a Chinese newspaper called the New Life Post. The first defendant being the owner of that newspaper has published that article. It is not disputed that that local vernacular has a circulation throughout the country though disputed by the defendants that the clientele is large. It is not a daily newspaper but has a frequency publication of about 7–9 issues a month. The second defendant is the person who edited the story in that newspaper whilst the third defendant is the relevant reporter of that supposed offending article (P15).

[2] The following defamatory words which when translated into English from Chinese read:

NEW LIFE POST

29.1.1997

A PRAISEWORTHY BRAVERY

Chen Xuan Feng has seen such propaganda wording before. 'He is the one and only singer in Malaysia who has recorded 5 albums with purely locally composed songs.'

He is Lau Yeong Nan.

Let's not discuss whether or not his albums sell well. But his perseverance and bravery are really praiseworthy. There are not many local recording companies bosses who are so 'generous'. His first album suffered losses. Maybe could give the second album a try. If the second album also suffered losses, may the singer please practice singing the song 'Fen Fei Yen'!

Praise is praise. But the image, words and deeds as well as the manner of Lau Yeong Nan, Chen Xuan Feng dare not give any compliments.

Using a naked photograph on the album front cover is a taboo in the musical circle in Malaysia. Later he revealed himself that a rich woman approached him 'to borrow his seeds' to give birth to a child, a homosexual raped him etc. All these are negative news. (Or is it propaganda trick?)

Recently he even spread news that he would march into China market. (Wow! What a big idea!) His MTV new songs were aired in the Central Television Station.

It is not known whether this matter is true or false? Alright, let it be true. But Mr. Lau's image and skill of singing still need 'polishing'. If he is put out to win honour for his country hastily the Chinese who do not know the truth will think that he is most popular, most potential and has the most representation in Malaysia.

Sad ! Sad ! Sad ! Sad ! Sad !

Chen Xuan Feng does not know what to say !

Chen Xuan Feng

Translated/Certified correct by me

…… scribbled signature……

PHANG CHEW HONG
CHINESE INTERPRETER
HIGH COURT KUALA LUMPUR'

[3] To simplify matters, the plaintiff has split up the alleged defamatory contents of the above article into three portions, namely:

First portion

> Chen Xuan Feng has seen such propaganda wording before. 'He *is* the one and only singer in Malaysia who has recorded 5 albums with purely locally composed songs.'
>
> He *is* Lau Yeong Nan.
>
> *Let's not* discuss whether or not his albums sell well But his perseverance and bravery are really praiseworthy. There are not many local recording companies bosses who are so 'generous'. The first album suffered losses. Maybe could give the second album a try. If the second album also suffered losses, may the singer please practice singing the song 'Fen Fei Yen'!
>
> Praise *is* praise. But the image, words and deeds as well as the manner of Lau Yeong Nan, Chen Xuan Feng dare not give any compliments.

Purpose and effect of those words

[4] According to the plaintiff in his pleadings, those words in their natural and ordinary meaning meant that he was not a good singer, it was meant to run him down in public, he was a bankrupt, he was not fit to appear in the entertainment world, his albums did not sell well, that his recording company owners were generous to promote his image, and if it were not for them, he would remain a bad singer, and he should practice singing the song *Fen Fei Yen*. By referring to the latter song, the defendants were effectually making a strong statement that he and his recording company should part company. The second portion is as follows:

Second portion

> Using a naked photograph on the album front cover is a taboo in the musical circle in Malaysia. Later he revealed himself that a rich woman approached him 'to borrow his seeds' to give birth to a child, a homosexual raped him etc. All these are negative news. (Or is it propaganda trick?).

Purpose and effect of those words

[5] As pleaded in the statement of claim, the said words when translated from Chinese into English meant, amongst others, that he was a male prostitute who had sold himself to a rich woman, that as he was unfit as a singer he should be removed from the public's view, he was without morals, a homosexual who had been raped by a man, a person who sold his body for money, and lastly he had perhaps resorted to propaganda tricks. The third portion reads as follows:

Third portion

> Recently he even spread news that he would march into China market (Wow! What a big idea!) His MTV new songs were aired in the Central Television Station.

It is not known whether this matter is true or false? Alright, let it be true. But Mr. Lau's image and skill of singing still need 'polishing'. If he is put out to win honour for his country hastily the Chinese who do not know the truth will think that he is most popular, most potential and has the most representation in Malaysia.

Sad! Sad! Sad! Sad! Sad!

Chen Xuan Feng does not know what to say !

Chen Xuan Feng

Purpose of the Offending Article

[6] According to the pleadings, all the above statements in their natural and ordinary meaning were meant to carry the message, inter alia that the plaintiff was a liar, incompetent to sing in the various media, his singing was below par, an unknown, and that he was attempting to deceive the public that his music was heard by the world at large. He was also alleged to be a hypocrite, and had cheated the Chinese public in China, an act supposedly a crime over there.

[7] According to the plaintiff, the sum effect of the above malicious publication is that his character, credit and reputation as a prominent singer has been besmirched and destroyed. He has been dragged into public scandal, odium and contempt, and as he has suffered seriously he thus is entitled to damages. It has been further asserted that with the article being published in such a sensational manner, which establishes the malice, and as the defendants knew or ought to have known that the allegations are untrue, the Court is asked to infer that they have been published, edited and reported in the knowledge that they are libellous and/or with a reckless disregard as to whether or not they are libellous.

[8] According to the plaintiff, the defendants have published those words calculatingly to increase the circulation of the said newspaper, with a view to making a profit. As the newspaper is widely circulated, the publication will be read by many people in the like of his fans, the ordinary public, the relevant radio and television station employees who are connected to his performances, and the entertainment companies who have signed contracts with him.

[9] As regards the damages, by reason of the false and malicious article, the plaintiff has also suffered pecuniary losses in the like of several concert contracts being terminated with a company called Sri Steps Sdn Bhd, having the address of 6th Floor, 83 Jalan Sultan, Kuala Lumpur. The pecuniary loss suffered by the plaintiff pursuant to the cancellation of the agreement dated 20 December 20 1996 amounts to RM4.5 million. The eventual compensation sought is RM10 million, made up of general, special, aggravated and exemplary damages.

The Law

[10] 1 July 1957 saw the Defamation Act 1957 (Act 286) being enacted in West Malaysia, with it being extended to Sabah and Sarawak effective 6 May 1965. The Civil Law Act 1956 later confirmed statutorily that the common law of defamation in England, with certain modifications, is to be

applicable to Malaysia. Regardless of those modifications, for all intents and purposes, the law of defamation of Malaysia is similar to that of England (*Abdul Rahman Talib v Seenwasagam* [1965] 1 MLJ 142).

[11] As in England, a person here is entitled to his peace of mind, without someone coming along destroying his tranquillity, by disparaging his reputation by defamatory statements without any lawful justification, with damages being his eventual compensation. The terminology of reputation extends beyond the borders of his general character and standing, but most certainly flows to his trade, business or profession, with that publication being defamatory if it imputes lack of qualification, knowledge, skill, capacity, judgment or efficiency in the conduct of his trade, business or professional activity (*Drummond-Jackson v British Medical Association* [1970] 1 All ER 1094 at 1104; *Scott v Sampson* (1882) 8 QBD 491).

[12] If that defamatory statement were to be in writing, printed or in some permanent format, then a tort of libel is the cause of action (*Mohd Onn bin Muda (Haji) v Saniboy Mohd Ismail* [1998] 1 CLJ 569). For the purposes of this case, as the term 'defamation' encompasses two separate actions in tort, namely libel and slander, with the latter being more transient, due to the nature of the case I shall only focus my attention on the former.

[13] As far as any plaintiff is concerned, his action is merely to redeem himself in the eyes of the public back to square one prior to the libel, and to demand reparation for that private injury, whilst the defendant in the process may, amongst other things, prove the truth of that publication and thenceforth establish that the plaintiff never suffered any injury. That aggrieved person has a right to 'have the estimation in which he stands in the opinion of others unaffected by false statements to his credit' whereby 'an action lies for any false, malicious, or personal imputation effected by such means and tending to alter the party's situation in society for the worse' (*SB Palmer v AS Rajah & Ors* [1949] MLJ 6; *Cargill v Carmichael & Anor* (1883) 1 Ky 603 (Civ)).

[14] In a case of this nature, it is incumbent upon the court to arrive at a conclusion that the above-mentioned offending article is defamatory. Prior to that it is necessary that certain steps be undertaken first, what with there being no universal test that can assist the court to determine whether the words are defamatory or not, except to seek out assistance from general formulations of precedents. What the court has before it is merely the statement of claim, which invariably supplies the offending words together with all the other necessary allegations, claiming that those words are published falsely and maliciously. The silver lining that relieves the difficult burden of the plaintiff is that he does not have to prove falsity or malice of those words to succeed if they are pronounced defamatory by the court (*S Pakianathan v Jenni Ibrahim* [1988] 2 MLJ 173; *Abdul Rahman Talib v Seenivasagam* [1965] 1 MLJ 142; *Tun Datuk Patinggi Abdul Rahman Yakub v Bre Sdn Bhd* [1996] 1 MLJ 393). After that pronouncement, the law presumes that they are false, and the onus shifts to the defendant whereby he must prove justification, that is, those words are true.

[15] Intention that leads to the publication of that article for a given plaintiff is irrelevant to the determination of it being defamatory, unless the defendant relies on the defence of unintentional defamation or qualified privilege, but is certainly relevant to the issue of damages (*Lee Kuan Yew v Davies* [1990] 1 MLJ 390; *Curtis v Metro-Goldwyn-Meyer (Oriental) Inc* [1931] SSLR 42; *Rajagopal v Rajan* [1972] 1 MLJ 45). In simple words, to wind up the issue in the immediate above and current paragraphs, the article must be looked at in an objective manner, according to the effect it would have on the ordinary reader, or on a reasonable person for whom the words are published, in this case the ordinary reader of the impugned newspaper (*AJA Peter v OG Nio & Ors* [1980] 1 MLJ 226; *Lee Kuan Yew v JB Jeyaretnam* [1979] 1 MLJ 281).

[16] As enunciated in the immediate abovementioned case of *Lee Kuan Yew v JB Jeyaretnam*, whether the publications are capable of bearing a defamatory meaning is a question of law. It is for the judge first to rule whether or not the words are reasonably capable of bearing a meaning defamatory of the plaintiff. If he rules positively, then the next step to be undertaken will be a question of fact, ie, to decide whether the words do indeed have the meanings alleged, with their meanings by necessity not to be far-fetched, or product of a forced or even unreasonable construction. In other words it must be effortless. Here the plaintiff has taken the additional step of laying down the meanings as reflected in paragraphs 7A, 12 and 17 of the re re-amended statement of claim, though in the format of particularisation (*R Murugason v The Straits Times Press (1975) Ltd* [1984] 2 MLJ 10).

[17] Avoiding the necessity of a discourse, suffice if I state that the impugned publication will be defamatory if it possesses the tendency to excite against the plaintiff adverse opinion, from a group selected by the court. Suffice even if the group is not in the majority in a given environment. The fact that no one believes the content of the article to be true is irrelevant. In the current case, the court has a wide berth to pick from, of a group that may have an adverse opinion of the plaintiff as a result of the said alleged offending publication, in the like of his fans, his sponsors, his fellow singers etc. One group will suffice without the necessity of exciting everyone, so long as it is a third party which has knowledge of the defamatory statements or words that relate to the plaintiff (*Clarence Wilfred v Tengku Adnan bin Tengku & Anor* [1983] 1 CLJ 136; *Coopers & Lybrand v Singapore Society of Accountants & Anor* [1988] 3 MLJ 134).

[18] For the purposes of a defamatory action in the High Court, O 78 of the Rules of the High Court 1980 caters for the procedure for bringing or defending a suit in defamation. This provision reads:

1. Application (O 78 r 1)

These rules apply to actions for libel or slander subject to the following rules of this Order.

2. Indorsement of claim in libel action (O 78 r 2)

Before a writ in an action for libel is issued it must be indorsed with a statement giving sufficient particulars of the publications in respect of which the action is brought to enable them to be identified.

A 3. Obligation to give particulars (O 78 r 3)

(1) Where in an action for libel or slander the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matter on which he relies in respect of such sense.

B (2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statement of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statement of fact and of the fact and matters he relies on in support of the allegation that the words are true.

C (3) Where in an action for libel or slander the plaintiff alleges that the defendant maliciously published the words or matter complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published upon a privileged D occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matter from which the malice is to be inferred.

(4) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and party against whom it is made the defendant.

E **[19]** For the purposes of this libel case, the possible defences that may be put up by the defendants, inter alia, are as follows:

1. that they never published the words complained of (*not denied by the defendants here*);

F 2. that the words complained of do not refer to the plaintiff;

3. that the words complained of do not bear any meaning defamatory of the plaintiff;

4. that the words complained of are true in substance and fact; and

G 5. that the words complained of are fair comment on a matter of public interest.

[20] Apart from relying on all the above defences except for the first, the defendants as reflected in the statement of defence have also refused to accept the plaintiff's interpreted version from Chinese to English. Since this H issue is the very basis of this action I will deal with it first. Whether I will accept the interpretation is left to me as the presiding judge, and having heard the testimony of the relevant witnesses I am satisfied that the interpretations are correct and succinct. That lady witness is an extremely experienced qualified interpreter who has worked with the High Court of Malaya for 22 years. With her credibility at the conclusion of the I defendants' cross-examination having remained untainted, let alone she never was subject to serious challenge or had not been impeached, the interpreted product therefore remains good.

[21] Adverting to the defences the defendants have denied:

1. that the article refer to the plaintiff;
2. that the words in the article are defamatory;
3. that sales of the tabloid increased as a result of the article;
4. that the plaintiff is well known in the entertainment world;
5. that the words complained of are unfair comments on a matter of public interest;
6. there is malice;
7. an apology is necessary; and
8. the plaintiff is entitled to damages.

[22] In brief, amongst other things, it is necessary for me first to decide whether the article is *capable of being defamatory*, and if indeed so capable, to conclude thereafter after perusing the words, *whether they are indeed defamatory as against the plaintiff*. Without beating around the proverbial bush, evidentially the person mentioned in the offending article is beyond any doubt the plaintiff. The article has not only identified the plaintiff by name but has also admitted that the words refer to the plaintiff by calling evidence to that effect.

[23] Having perused the article I am satisfied that the article is capable of being defamatory. In a gist, any reader in the court selected group, after reading the write-up, will naturally arrive at an opinion that not only is the plaintiff an untalented and unsuccessful singer who thrives on sympathy from recording companies but a liar, a homosexual, a sexually perverted person, a sodomised victim, someone no parent will want his or her child to emulate and someone who breaches all rules of decency.

[24] So, after scrutinising the evidence, is the article defamatory? Before arriving at that decision, I must by necessity sift whatever has been tendered at the plaintiffs stage, focusing first on his standing in the entertainment world as a singer. To prop up his career successes the plaintiff has tendered into court a cassette and six compact discs that carry his songs. They are:

1. *Tell me how you feel* (P8G) (released on 1 April 1991);
2. *Colour of Youth* (P8D) (released on 26 July 1993);
3. *Wonderful World* (P8E) (released on 14 November 1994);
4. *In anticipation* (P8A) (released 11 September 1995);
5. *Boy* (P8F) (released on 6 January 1997);
6. *Happy New Year* (P8B) (released in 1998); and
7 *TV Series Theme Songs* (P8C) (released in 1999).

[25] If the first album, released on 1 April 1991, has suffered financial losses as reported in the article, it goes against all entrepreneurial sense for the recording company to produce six more albums thereafter, with the last sometime in 1999!

[26] Such an assertion therefore by the defendants, apart from being unsubstantiated, and certainly conjectural in nature, is clearly an unwarranted remark to say the least.

[27] His successes have even deserved him some useful space in the first defendant's newspaper, The Malay Mail (29 March 1996, 19 July 1996, 22 April 1997, The Star (15 April 1997), The New Straits Times (30 September 1997), and even in tabloids as far away as Sabah and Sarawak. I am also satisfied that he was contracted to work with Layar Opera (P29), a subsidiary of TV3 currently one of the main private television stations in Malaysia. The latter exhibit, tendered by the plaintiff also establishes that he was en route to a contract with a company called Fabulous Teenager Sdn Bhd.

[28] It is universally accepted that many budding aspirants have disappeared into the wilderness of has-beens after being unsuccessful in cutting a disc or even after a mere single disc. Can I now in all logic and fairness, after observing and appreciating those cassette and compact discs, which span from 1 April 1991 until 1999 still conclude that he never made it in the entertainment world of singing-cum-entertainment? After due consideration, apart from having been a recording artiste for such a long time, and in the light of all his other involvements in concerts and television all over the country, I must decline from denying him his rights to popularity and the world of glitz. He is a man of good looks who will have no problems in fluttering the hearts of the young and old, and who has created a niche for himself in the entertainment world. With all those successes in his wake, the contradiction by the defendants based on falsity of facts of his erstwhile success, his capability as a singer, competency and his being undoubtedly a household name is indeed defamatory. The words adverted to by the defendants mean exactly as how they are written, easily understood, and effortlessly plain to the ordinary man. From the testimony of witnesses including the evidence of PW4, the tendency to excite against the plaintiff crystallised when several contracts executed by the plaintiff were either terminated or not extended, after being affected by the libellous publication.

[29] I now proceed to the next step. As the article has now been pronounced to be defamatory, assisted in the process by direct evidence as produced by the plaintiff, evidentially the contents of the article *thus is presumed to be false*, whereupon the onus now shifts to the defendants to rebut that presumption.

[30] To rebut the presumption that the article is false, in order to be entitled to the defence of fair comment, the defendants have attempted to adduce rebuttal evidence justifying the facts supplied in the article. For starters they have defended that one of the albums carries a cover that shows him in a naked pose (P8A). The question begging to be answered is, is he

actually naked? The defendants have adduced a related document, ie, D19, a magazine containing and divulging the plaintiff in some semi-lewd poses, but certainly have not established that he is stark naked in any of those photographs. In fact the plaintiff, in anticipation of the allegation did testify that factually he was wearing a g-string (tendered as P9) for that photography session, meant for D19.

[31] Subsequently, one of the photographs, ie, p 2 of D19 was exploited and used as the cover of the controversial album carrying the title 'In anticipation' (P8A). Naked in the context of a man means to be completely bared and without a shred of thread or anything covering his entire body and his sexual organs. Here only the bared back of the plaintiff is seen, with his face facing the other side, and his rear parts being totally covered by bold letters carrying his name. With all the available evidence before me, supplemented by his oral evidence, and after physical inspection of D19 (page 2) and P8A, I am satisfied that he never was proved naked during that impugned photography session. That being so, the defendants' testimony as regards the naked factor in P8A is far from the truth.

[32] Even if the wearing of the g-string is against D33, ie, in contravention of the guidelines supplied by the Ministry of Home Affairs, to state categorically that he is naked is evidentially inaccurate and misleading. That being so, the argument of the defendants that they are merely stating the truth detracts from the facts again.

[33] Another relevant point open to dispute is whether the plaintiff was at all raped. Rape in the criminal sense has a special connotation, in that a woman has had sexual intercourse against her will, without her consent, or having sexual intercourse with a girl less than sixteen years of age. In the case of *Youssoupoff v Metro-Goldwyn-Mayer Picture Ltd* [1934] TLR 581 the court had occasion to observe:

> To say of a woman that she has been ravished is defamatory of her as tending to cause her to be shunned and avoided although it involves no moral turpitude on her part.

[34] Irrespective of the requirement that the victim must be a female, the general consensus for purposes of this case will be that a mystery man has sodomised the plaintiff. Yet a cursory perusal of Bundle E page 3/3, an article prepared by one Ms Lim Mee Fong, and the very source supposedly reproduced by the defendants, merely states that he was sexually assaulted, an offence which is less demeaning or humiliating. Certainly he was not raped, and by analogy to *Youssoupqff v Metro-Goldwyn-Mayer Picture Limited* (supra), I see no reason why the assertion that the plaintiff has been sodomised, when untrue, cannot constitute defamation.

[35] Additionally, in the offending article it is clear that the message relayed to the public is that the plaintiffs first album has suffered losses, with him not being a viable investment to any recording company. Despite that spirited statement, the defendants fail to adduce any admissible evidence to rebut the presumption of falsity of the fact of those losses when the opportunity arose.

[36] As at this stage I am satisfied that the defendants have not been successful in proving that:

1. the plaintiff is a bad and an unsuccessful singer;
2. his albums have suffered losses;
3. he posed naked on the cover of one of his albums (P8A); and
4. he was raped.

[37] I now wind up my other findings in relation to the defences of the defendants. Those findings are that:

1. the defendants in their respective capacity did publish the libellous article; and
2. the article complained of do refer to the plaintiff.

[38] The above factual findings are connected and highly relevant to the defendants' defence of fair comment. This available defence, which relates to matters of public interest, will include the realm of work of art, literature, dramatic works, political matters and the public conduct of public men and every public institution. Any person who fills a public position renders himself to scrutiny and public discussion, and if any of his public acts which are of public interest are improper or wrong, he must accept fair criticism from the critical public.

[39] It must be clarified that this right of fair comment is a fundamental right of free speech and writing on which the general personal freedom of a person is founded (*Lyon v Daily Telegraph* [1943] KB 746). Despite the bestowal of that recognised right to criticise, certain guiding principles must be adhered to by him, inter alia, the words complained of are fair and bona fide comments and of public interest, and the statements relating to those complained words are true (*London Artists Ltd v Littler* [1969] 2 QB 375 at 395; *Purshottam Vijay v State* AIR 1961 MP 205 at 208. The logic of fair comment based on accurate facts is quite obvious, as the exposure of those facts followed by an opinion will surely not harm or work injustice against that complainant. If the statements are untrue, it is not a defence for any defendant critic to allege that he bona fide believed them to be true, as even though the right to comment is free, facts are sacred (*Raghunath Singh v Mukandi Lal* AIR 1936 ALL 780 at 786).

[40] Needless to add, the above exposition applies equally to any newspaper, as it has no greater right to comment than an individual (*R v Gray* [1900] 2 QB 36 at 40).

[41] Even though every comment based on untrue facts may be frowned upon, a plea of fair comment will not necessarily fail merely on some minor but inaccurate fact made public. In certain circumstances, even though not all the statements are inaccurate, it will not be unreasonable to opine that half a truth can also amount to an outright lie (*Carter-Ruck on Libel and Slander* (5th Edn, Butterworths) p 112). To avoid injustice and unfairness,

any defence of fair comment will naturally fail when the facts are important but false. In the current case, the false facts not only are substantial and highly important, but effortlessly recognisable as being the heart and soul of the libellous offending article.

[42] With such a failure by the current defendants to establish factually the contents of the offending article, the defendants thus have failed to rebut the presumption of falsity of facts and thus must be denied the legal right to rely on the defence of fair comment. That being the scenario the latter's position is indisputably precarious.

[43] I need to add that I have taken the publication as a whole and not merely picked and chosen the parts that are obviously defamatory to say the least. In fact, after having meticulously scrutinised the article I will not hesitate to state that I fail to identify any redeeming sentence that can be construed as having taken the sting of the defamation in the publication. The contents, style, vehemence, consistency of the attack on the plaintiff, reek of outright and purposeful defamation. With the offending article being untrue in substance and fact, and all the other connected ingredients having been successfully established by the plaintiff, I have no hesitation in stating that the plaintiff has proven his case against the defendants on a balance of probability at the end of the trial.

[44] To detract slightly from the mainstream, at the plaintiff's stage, an attempt was made by his lawyer, albeit through the back door, to introduce a second cause of action, ie, by the mode of legal innuendo. This to me is a proactive act of overkill. Having been satisfied that the plaintiff has established his libel at the end of the case by depending on the natural and ordinary meaning of the article, I see no necessity to discuss his second front. On that premise I do not see the need to discuss this procedural interloper, thankfully also not seriously canvassed by the plaintiff.

[45] I now proceed with the issue of damages. At the earliest of stages I did state that the eventual successful litigation outcome would be the reparation of the plaintiff for the losses suffered by him as a consequence of the libellous publication. The object of the award of damages is primarily to redress him for the loss or injury suffered by him whilst the pecuniary compensation is to compensate the wrong suffered (*McCarey v Associated Newspapers Ltd* [1964] 3 All ER 947). With that legal principle well entrenched, the law also presumes that some damages must flow from the mere invasion of his right to his reputation of which 'general damages', which is 'at large' is the plaintiff's for the taking. Those two words 'at large' indicate that the award is not limited to any pecuniary loss that can be specifically proved (*Halsbury's Laws of Malaysia* (vol 2) p 214). Much as a person's reputation has no actual cash value, that does not stop the presiding judge from putting a figure, in the light of the facts before him. Needless to say, actual loss under the heading of 'special damages' may be awarded, so long as the plaintiff can prove those losses, and that they flow directly from the libellous words.

[46] As redress is the foundation of the pecuniary compensation, there is thus no room for the importation of the concept of exemplary or punitive damages (actually part of 'general damages') except for certain categories, namely oppressive, arbitrary or unconstitutional action by government servants or where the conduct of the defendant has been calculated to make profit for himself, eg, a newspaper, or where statute expressly authorises such an award (*Rookes v Barnard* [1964] AC 1129; *Boardway Approvals Ltd v Oldhams Press Ltd* [1965] 2 All ER 423 at 537; *Chong Siew Chiang v Chua Ching Geh & Anor* [1995] 1 MLJ 551). The principles of *Rookes v Barnard*, whereby exemplary damages or punitive damages as part of the total damage award may be given as laid down by the House of Lords, are here to stay in Malaysia, and has consistently been applied without any hesitation (*Syed Husin Alt v Sharikat Perchetakan Utusan Melayu Bhd & Anor* [1973] 2 MLJ 256). To wind up the poser of exemplary or punitive damages, *McCarey v Associated Newspapers Ltd* (supra), delineating the law with regard to damages in a libel action, and in the process confirming the awarding of aggravated damages within the four walls of the compensatory principle, had occasion to state:

> If I may summarise shortly in my own words, what I think is to be derived from that case, it is this: from that henceforth a clear distinction should be drawn between compensatory damages in a case in which they are large and may include several different kinds of compensation to the injured plaintiff. They may include, not only actual pecuniary loss and anticipated pecuniary loss, or any social disadvantages, which result, or may be thought likely to result, from the wrong, which has been done. They may also include, natural injury to his feeling: The natural relief and distress which he may feel; in being spoken of in defamatory terms: and, if there has been any kind of high-handed, oppressive, insulting or contumelious behaviour which increases the mental pain and suffering which is cause by the defamation and which may constitute injury to the plaintiffs pride and self-confidence. These are proper elements, to be taken into account, in a case where the damages are at large. This is, however, a sharp distinction between damages of that kind, and truly punitive or exemplary damages. To put it in another way, when you have computed and taken into account, all the elements of compensatory damages, which may be awarded to the plaintiff and arrived at a total of £X by way of punishment of the defendant, for his wrong-doing. The object of the award of damages in tort, nowadays, is not to punish the wrong-doer, but to compensate the person, to whom the wrong has been done. Moreover, it would not be right to allow punitive or exemplary or damages to creep back into the assessment, in some other guise. For instance, it might be said 'You must consider not only what the plaintiff ought to receive, but what the defendant ought to pay. There are many other phrases which could be used, such as, those used in extracts; which I have cited from some of the decided cases. In my view, the distinction between compensatory and punitive damages, has now been laid down quite clearly, by the House of Lords in *Rookes v Bernard*, and ought to be permitted to have its full effect in the sphere of libel actions, as well as in other branches of tort …

[47] As revealed earlier, from the statement of claim it is quite obvious that the plaintiff has pleaded a global and single sum of RM10 million on the footing of general, special, aggravated and exemplary damages, along with the prayer of injunction and the usual costs. To assess the harm that has befallen the

plaintiff as a result of the offending article, the gravity of the defamation must come to the forefront for purposes of my consideration, bearing in mind that his income and acceptability by the concerned public is highly dependent on his level of popularity. With his fans and people directly connected to the media and music houses more discerning, and definitely sensitive to competition, any untoward comments can only do immense harm to his career.

[48] If one were to peruse D2, the very source of the libellous publication, that document apart from containing certain scathing comments about the plaintiff has, to the credit of the reporter, also included informative and redeeming features of him. In that document, and tendered by the defendants, the writer has recorded the rejection by the plaintiff of any suggestion of being a pornographic actor, the admission and desire of the plaintiff to act in normal films, the confirmation that he has completed the serial drama entitled 'Ta Shang Qing Yun Lu', the admission of him acting in another serial drama entitled 'Yu Shang Hua', affirming that he has received RM1,000,000 for those dramas, highlighting his contributions in the programs in the 'Happy Hours' show in Radio 5, laying down his future plans, and lastly records that if he has taken off his clothes before, that will not happen again. In other words, the source of the defendants' publication is fair, encouraging, decent, informative, without malice and certainly honest. In the offending publication, from the word go the purpose and language is to run him down, disparage his character, destroy his career, and all without a trace of pity or any redeeming features. Indisputably the negative picture painted by the defendants has clearly stunted his career growth when contracts suddenly begin to dry up or executed contracts were terminated or not extended. How can the impact not be debilitating and highly prejudicial to his reputation and public estimation of him, when the libellous attacks are sarcastic, withering, demeaning, scandalous and outright false even for any battle-hardened entertainer?

[49] By the very nature of the above conclusion which shows how heartless and unfair the defendants are, I am entitled to award aggravated damages as the defendants' conduct has been high-handed, oppressive and actuated by a negative agenda. In fact, at the outset I must declare that I intend to award him aggravated damages. Any reasonable person can deduce with ease that the defendants who have the power of the pen, and the capacity to influence the untrained populace, especially young readers, have all the facilities in their command to know the truth of their publication, repercussions, and eventually the overall effect to the public and the aggrieved party. They have dug up past publications, eg, the album released on 11 September 1995, with D19 sold much earlier than that, primarily to beef up the offending article (P15), to be released on 29 January 1997 purposefully to run him down. The unforgiving behaviour of the defendants, which apart from damaging the reputation of the plaintiff, has humiliated him, and in the process, practically caused mental stress to him; (*Chong Siew Chiang v Chua Ching Geh & Anor* [1995] 1 MLJ 551). At p 34 of the notes of proceedings the plaintiff has succinctly stated when asked about his reaction:

I was shocked and furious. I was very upset and this article emotionally broke me down and shattered my confidence. I am unable to face the public. I felt humiliated and degraded and my good reputation was lost. I was ruined.

[50] Is the plaintiff entitled to exemplary damages? In the circumstances of the case I am satisfied that the purpose of the libellous publication is to increase sales and on that premise a need arises to make a few finding of facts first. In January 1997 the defendants sold 655,848 copies of the New Life Post whilst in February 1997 only 532,056 copies were sold. By comparison, in January 1998 the first defendant sold 638,568 copies whilst in February 1998 only 521,616 were sold (PW1). Even though the month of February has fewer days than January it is clear that the defendants do not benefit financially from the publication. It is trite law that whether the sales do increase or not is irrelevant for purposes of ordering exemplary damages, but what is pertinent is the defendants' state of mind when publishing the article, ie, whether they had acted in the way they did, in the hope of or expectation of material gain. What was in the defendants' minds may be established by legally admissible evidence and means, and that may include their abrasive conduct and actions. Notwithstanding that clarification, bearing in mind that there are redeeming features that support the defendants' case as regards the lack of basis to award exemplary damages, I therefore decline to award it.

[51] After due consideration, an award of RM300,000 (three hundred thousand ringgit) for general damages rolled in with the aggravated damages is a fair sum in the circumstances of the case (see *Pang Fee Siong v Piong Kien Siong* [1999] 3 MLJ 189 for consistency).

[52] I now delve into the realm of 'special damages'. Even though the plaintiff has alleged that contracts have dried up and he is currently suffering financial setbacks, sadly enough he has not made any attempts to prove those losses except for the termination of a contract with Sri Steps Sdn Bhd This is supposedly a lucrative contract signed on 20 December 1996, and if not for its untimely termination on 10 February 1997, the plaintiff was to earn RM4.5 million. The relevant plaintiff's witness who attempted to throw some light regarding this loss is PW4. She was a director in that company and had confirmed that the contract was cancelled as a direct result of the bad publicity generated by the article (NOP 20-21; P15). Despite the oral testimony of that witness, supported by a documented agreement, I am unable to conclude that the plaintiff has succeeded in proving this loss satisfactorily on a balance of probability.

[53] The reasons for the failure of the plaintiff to prove the authenticity of that contract are manifold, beginning with the very contract itself for being unrealistic. The statement of claim was filed on 24 April 1997 whilst the supposed contract with Sri Steps Sdn Bhd was only included in the pleadings after an amendment had been made on 26 April 1998. This development is certainly unusual at the very least, as several negative interpretations can unfold from that, the like of it being an afterthought and thus a sham contract.

[54] At the time of the supposed execution of the contract with Sri Steps Sdn Bhd the plaintiff was already tied down with Layar Opera Sdn Bhd, as proved by Exhibit D18. This agreement was signed on 7 March 1996 whilst the supposed contract with Sri Steps was executed on 20 December 1996. According to the agreement between the plaintiff and Layar Opera Sdn Bhd, the plaintiff was not to appear or perform in any motion picture, stage plays, television features, television serials and dramas or radio programmes of any kind without the producer's prior written consent. In cross-examination the plaintiff admitted that he never obtained any written consent though was successful in extracting a verbal consent. Still that was not written as required by the agreement.

[55] The plaintiff is a singer by profession, yet Sri Steps Sdn Bhd as reflected by the director's report has its principal activity 'in educating and promoting dancing and arts'. Even in four audited accounts the turnover is described as 'turnover represents the income received from conducting classes, hall and locker rental and sale of dance wear' The expertise and talent of the plaintiff, primarily and supposedly to sing for the latter company, surely does not fit in with its business. PW4 in the course of the cross-examination even admitted that that impugned company only organises dance competition, diploma courses in dancing and dance shows and certainly does not engage professional singers. To top it all, Sri Steps has been suffering losses every year from 1996 to 1998.

[56] If the plaintiff has been contracted especially to help Sri Steps get back on its feet again and be a viable enterprise, sadly enough no serious steps have been undertaken by it to ensure the success of the concerts. To begin with:

1. no official sponsors have been attracted for any show;
2. no venue has been fixed or booked for the shows supposedly to begin in March 1997 which is about two months away;
3. no tickets have yet to be printed;
4. insufficient time to obtain the necessary entertainment licence and permit;
5. insufficient time to sell the tickets even if the tickets can be printed before the shows;
6. no legal proceedings have been taken against Sri Steps for the termination of such a lucrative contract; and
7. if the shows were to be worth RM50,000 each, with the plaintiff supposedly to retain RM25,000 what with payments of the venue, the dancers, the miscellaneous payments, the company will definitely pack up in no time.

[57] Having considered all the evidence of inactivity and unreasonableness of the agreement, I have absolutely no hesitation in rejecting the claim for 'special damages'. As far as the court is concerned the

plaintiff has failed on a balance of probability to establish that actual loss. To wind up the case, I am satisfied that the plaintiff has succeeded in proving his case on a balance of probability on certain prayers at the conclusion of the full trial, and that being so I pronounce the following relevant orders:

1. the defendants to pay RM300,000 as general damages and aggravated damages to the plaintiff only for the libellous publication reported on 29 January 1997 in an article entitled 'Praiseworthy Bravery' in the New Life Post;

2. the defendants are restrained by an injunction, whether by themselves or their agents and servants from further printing, circulating, distributing or publishing the said libel; and

3. costs against the defendants.

Judgment against the defendants.

Reported by Lim Lee Na